



City of Albuquerque

Legislative File Number O-06-44 (version 1)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

Adopting Policy Guidelines And Application Procedures For The Establishment Of Tax Increment Development Districts Within The City Of Albuquerque, New Mexico.

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

WHEREAS, the City of Albuquerque, New Mexico (the "City") desires to benefit from the Tax Increment for Development Act, Laws 2006, Chapter 75 (the "Act"); and

WHEREAS, a tax increment development district ("TIDD") provides a funding mechanism to finance construction, operation, and maintenance of public infrastructure within the boundaries of the TIDD, and to better enable the City to provide municipal services within the boundaries of the TIDD; and

WHEREAS, in order to permit the City to make a reasonable judgment as to whether or not to establish a TIDD and upon what terms, the City has established these policy guidelines and application procedures.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. GENERAL POLICIES.

(A) This ordinance is intended to serve as guidelines for the purpose of considering and, as appropriate, approving the establishment of tax increment development districts and the issuance of bonds of such districts pursuant to the Act. The purpose of this policy is to enable the City to make a reasoned judgment concerning the terms and conditions upon which to approve the formation of a TIDD and to provide procedures for the City to consider TIDD applications. Capitalized terms not

otherwise defined herein are as defined in the Act.

(B) This policy is adopted to provide ease of administration and to assure that the City's tax base is not compromised, taking into account the overall economic benefits of the TIDD, which are demonstrated to the reasonable satisfaction of the City. The decision to form a TIDD shall be a legislative enactment of the City Council and Mayor exercised in accordance with law. The City shall encourage an area to be governed by as few TIDDs as practicable, taking into account however the need to finance discrete infrastructure projects to serve separate but related land uses and the need to utilize discrete financing approaches.

(C) TIDDs should be utilized for the financing of public infrastructure for economic development or redevelopment that facilitates and supports development and job creation. Public infrastructure financed by a TIDD shall (i) enhance the sustainability of the local, regional or statewide economy, (ii) support the creation of jobs, schools and workforce housing, and (iii) generate tax revenue for the provision of public improvements.

(D) Public improvements financed by a TIDD should be in conformance with applicable long-range City policies for development, including, but not limited to, the Albuquerque/Bernalillo County Comprehensive Plan, the Subdivision Ordinance, the Zoning Code, §14-13-2-3 R.O.A. 1994, and §§14-13-1-1 et seq., R.O.A. 1994, the Ordinance adopting elements of a Planned Growth Strategy; City Resolution No. F/S R-02-111(A) relating to the Planned Growth Strategy Report, including the maps setting forth the current service areas contained in Exhibit A thereto; the current City enactment relating to the Capital Implementation Program; other ordinances applicable to the affected land including annexation ordinances and any related annexation agreements, if any; and all supplements and subsequent enactments relating to these measures.

(E) All costs and expenses incurred by the City in connection with the application, formation, and operation of a TIDD shall be paid by the applicant/landowner through advance payments as provided in §4(B) and 5(A) hereof. Costs and expenses incurred by the City in connection with the application and formation of a TIDD shall not be liabilities of the City. Advance payments shall include payments for services rendered by City staff, services rendered by outside consultants who may be retained by the City

including, but not limited to, bond counsel and other attorneys, financial advisers, engineers, appraisers, and tax consultants. If the City uses outside consultants as "staff," such as attorneys or engineers, those consultants shall be paid their normal rate for services.

(F) Subsequent to the approval of an application for formation of a TIDD by the City, and after authorization by the TIDD exercising its sole discretion, all or part of such advance payments may be reimbursed to the developer/landowner or to the TIDD to the extent permitted by state or federal law, from the proceeds of bonds, tax increment revenues or other legally available revenues of the TIDD. The City may, in its discretion, based on a particular applicant's development plan and financing plan, authorize the TIDD to reimburse a portion of the applicant's equity contribution not to exceed 20%, based on a demonstration satisfactory to the City that the goals served by the TIDD are not compromised by such reimbursement. Section 20(B) of the Act requires property owners to contribute a minimum of 20% of initial infrastructure cost prior to the issuance of gross receipts or property tax increment bonds, unless the project to be financed is a redevelopment project pursuant to the Metropolitan Redevelopment Code.

(G) The TIDD shall be governed by a Board of Directors comprised of members of the City Council, ex officio, or, at the option of the City Council, five directors appointed by the City Council, (the "TIDD Board"). The City Council may, in accordance with law, delegate certain responsibilities of governance of the TIDD to a committee as approved by the City Council. The day-to-day responsibilities of the TIDD may be performed pursuant to an agreement with outside personnel (including a development agreement entered into pursuant to the Act), or City staff. Advisory committees may, at the option of the TIDD Board, be utilized. An applicant may request the formation of a single TIDD or multiple TIDDs which are designed to finance discrete infrastructure projects to serve separate but related land uses, and which rely on discrete tax increment financing approaches.

(H) The TIDD shall be self-supporting. Except as set forth in §1(K), no City funds shall be used for TIDD purposes including financing, operations or maintenance. Notwithstanding anything to the contrary which may be contained herein, neither the property, the full faith and credit nor the taxing power of the City shall be pledged to the

payment of any TIDD obligation or indebtedness.

(I) The TIDD Board shall determine, in accordance with its policies and procedures, the amount, timing and form of financing to be used by a TIDD after review of the financial feasibility study required by §3(E) and 3(F) of this Ordinance. All bond proceeds generated by the financing must be spent on project costs in accordance with the bond documents and the policies and procedures of the TIDD Board. No water or wastewater utility system, or any portion thereof, which is billed for separate and apart from the City/County water and wastewater utility shall be financed.

(J) Except as otherwise determined by the City Council, the TIDD shall construct or finance improvements on such terms and with such persons as the TIDD Board determines to be appropriate, in accordance with Section 12(B) of the Act, as amended. The TIDD shall otherwise construct and finance improvements in accordance with applicable public works acts. Construction, performance, and payment bonds shall be furnished in accordance with the City policies and procedures governing subdivision improvement agreements.

(K) Existing City policies for development, growth management and conservation shall remain in effect and shall not be waived or relaxed upon the creation of a TIDD. The TIDD may use bond proceeds or other TIDD funds to purchase public rights-of-way or other real property to be used for public infrastructure improvements, unless such real property would be required to be dedicated and conveyed to the City by the developer/landowner upon development of the developer's/landowner's property.

(L) Until the dedication of the infrastructure to the City, and acceptance by the City, all costs of administration and operation of the TIDD and the operation and maintenance of public infrastructure in the TIDD shall be the responsibility of the TIDD, the developer/landowner, applicable homeowners' association, or any combination of the foregoing, as may be acceptable to the City and the TIDD. Except as otherwise provided by other ordinance of the City, or as demonstrated to the City to be consistent with the requirements that TIDD-financed improvements result in no net expense to the City, after dedication and acceptance, all costs of operating and maintaining public infrastructure serving an area not otherwise served by the City (e.g. with water/sewer service or street maintenance) shall be borne by the TIDD, the developer/landowner or

the applicable homeowner's association, or any combination of the foregoing, until the area in which the public infrastructure is located is served by the City.

(M) Notwithstanding any other provisions of this Ordinance, a TIDD may be created in an area for which neither the City nor the Albuquerque Bernalillo County Water Utility Authority provides water, wastewater, or storm drainage utilities. Any TIDD created in an area not served by existing water, sewer or storm drainage utilities shall be consistent with the parameters of the No Net Expense Policy set forth in §14-13-2-3 R.O.A. 1994, and §§14-13-1-1 et seq., R.O.A. 1994. Except as otherwise provided by other ordinance of the City, or as demonstrated to the City to be consistent with the requirements that TIDD-financed improvements result in no net expense to the City, developers of unserved areas shall be required to pay 100% of all on-site charges associated with the TIDD-financed improvements. Except as otherwise provided in the Development Agreement, developers of unserved areas shall be required to pay that portion of off-site charges determined to be appropriate for the development.

SECTION 2. PRE-APPLICATION DISCUSSION WITH CITY STAFF. Potential applicants for a TIDD are encouraged to schedule and conduct a pre-application meeting and discussion with City staff. Input provided by City staff shall be of an advisory nature only, for the purposes of assisting applicants in submitting completed applications with detail and information required to enable meaningful consideration by the City Council. The purposes of the pre-application meeting shall be to:

(A) Make an initial assessment whether the proposed TIDD appears to be consistent with the City's land use and development policies, zoning and other applicable regulations, including applicable policies relating to economic development and job growth;

(B) To help identify any related City approvals that will be required to permit the TIDD;

(C) To identify other issues specific to the applicant's proposed project that should be addressed in its application in order for the City to make the findings required by Section 1(C) of the Act, such as compliance with applicable City policies, rules or regulations, and the proposed project's facilitation or support of economic development, job growth and job creation, work force housing, public school facility development and

enhancement, mixed-use transit-oriented development, traditional neighborhood design or sustainable development; and

(D) To establish a preliminary schedule for (i) the applicant's submittal of a TIDD application, (ii) City staff review of the application for completeness, (iii) City Council meeting or meetings for its consideration of and action on the application.

SECTION 3. CONTENT OF APPLICATION. All applications for the formation of a TIDD shall be submitted to the City's Chief Administrative Officer. Each application shall, at a minimum, contain the following:

(A) A description of the proposed TIDD, including a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors (as defined in Section 3-1-2(K) NMSA 1978) located within the proposed boundaries. The description must contain an analysis of the appropriateness of the TIDD boundaries.

(B) If the TIDD is proposed to be formed without an election through the waiver of election provided for in the Act, evidence satisfactory to the City of the unanimous consent of owners of real property within the proposed boundaries of the TIDD to the creation of the TIDD. A current title report on the property shall be submitted as evidence of the names of persons with any interest in the land and qualified electors. In the event that any owner of property within the proposed TIDD withdraws consent to the creation of a TIDD, the applicant shall have the opportunity to submit a revised application and shall not be required to submit a new application fee as provided in §4; provided, that the City may request that the applicant deposit additional funds to pay costs reasonably incurred by the City in reviewing an application which has been revised as a result of a property owner's withdrawal of consent to the creation of a TIDD.

(C) If the TIDD is proposed to be formed by election, evidence satisfactory to the City of the applicant's ability to pay for an election, whether or not an all mail-in election, and a proposed election timetable.

(D) A detailed description of the types of public infrastructure to be financed by the TIDD, including the estimated construction or acquisition costs of the public infrastructure, projection of working capital needs, including adequate funds for repair and replacement of infrastructure, the annual operation and maintenance costs of the

public infrastructure and the governmental approvals and licenses that shall be required for both the public and private improvements to be constructed and operated. The description shall contain adequate information to establish financial parameters for the operation and financing of the TIDD as set forth in §5 of this Ordinance. The description shall include a representation concerning the future ownership and maintenance of the public infrastructure.

(E) A proposed project schedule for commencement and completion of (a) the public infrastructure and (b) the private development, which shall include the financial feasibility study required by §3(G) of this Ordinance for the public infrastructure, including both capital and operating/maintenance costs for all improvements undertaken by the TIDD. The financial feasibility study shall include projections for a period which shall be the longest of (i) the expected term of existence of the TIDD, (ii) the anticipated period during which tax increment is to be collected by the TIDD, or (iii) the proposed final maturity date of any bonds issued by the TIDD. The financial feasibility study shall include at least: (a) estimated costs of improvements; (b) projected costs of maintenance after construction; and (c) a complete description of the improvements to be owned and maintained by the City or the TIDD.

(F) A tax increment development plan that includes the following information:

(1) Whether gross receipts tax increment bonds or property tax increment bonds or both are proposed;

(2) The public improvements proposed to be financed by each type of bond financing proposed along with a description of the public improvements and an estimate of the costs of completion;

(3) The estimated annual gross receipts tax increment to be generated by the TIDD project; and the portion of that gross receipts tax increment proposed to be pledged as security for gross receipts tax increment bonds, (which portion may not exceed seventy-five percent of the gross receipts tax increment) if applicable;

(4) The estimated annual property tax increment to be generated by the TIDD project and the portion of that property tax increment proposed to be pledged as security for property tax increment bonds (which portion may not exceed seventy-five percent of the property tax increment), if applicable;

(5) Any proposed use of gross receipts tax increment revenues or property tax increment revenues other than to secure the payment of bonds;

(6) The proposed land uses for the TIDD project including a map depicting the geographic boundaries of the TIDD;

(7) The number and types of jobs expected to be created by the TIDD project during build-out of the TIDD and after completion of the TIDD;

(8) The amount and characteristics of workforce housing expected to be created by the TIDD project;

(9) The location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed by the TIDD project;

(10) A description of innovative planning techniques, including mixed-use transit-oriented development, traditional neighborhood design or sustainable development techniques, that the City should find to be beneficial and that are proposed to be incorporated into the TIDD project; and

(11) The amount, type and source of private investment in the TIDD project.

(G) A financial feasibility study (which shall be satisfactory to the City and prepared by an independent professional with appropriate expertise) for the entire project (or such phases of the project that are expected to be constructed during the term of the TIDD) covering both the public infrastructure and the private development and including appropriate cash flow analysis addressing projected tax increment revenues. The financial feasibility study shall include:

(1) An analysis of the financing and the estimated costs of the improvements, services and benefits to result from the formation of the proposed TIDD (including the time estimated to be necessary to complete the TIDD improvements).

(2) A financing plan for any private development in the TIDD which is not expected to be dedicated to the City.

(3) A market absorption study for the development in the TIDD prepared by an independent consultant acceptable to the City. Such study shall include estimates of the revenue to be generated by the development, an estimate of the ability of the market to absorb the development, and a market absorption projection for the private development. This study shall take into account the effect, if any, that the proposed debt

financing, operation and maintenance costs, and other TIDD costs are expected to have on the marketability of the private development.

(H) A description of the proposed equity contribution from the applicant and a calendar showing the anticipated timing and sources of such contribution. An equity contribution shall be equal to a minimum of 20% of estimated initial infrastructure cost prior to the issuance of gross receipts or property tax increment bonds, unless the project to be financed is a redevelopment project pursuant to the Metropolitan Redevelopment Code.

(I) A description of the applicant's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the public infrastructure and private development. The application shall also describe the direct and indirect benefits to all parties with financial interest in the proposed development. Such information shall be accompanied by three-year audited financial statements, if available, along with a description of past projects and disclosure of any material litigation.

(J) An operating plan for the TIDD, describing the extent of the TIDD's responsibilities for and anticipated costs of operation and maintenance, the method of carrying out those responsibilities, and specifying whether the TIDD or another entity will be responsible for operation and maintenance of specific public infrastructure or improvements.

(K) A description of how the proposed TIDD meets the existing development objectives of the City, including the degree to which the TIDD is (1) consistent with the goals of promoting orderly development, (2) consistent with the Albuquerque/Bernalillo County Comprehensive Plan; (3) consistent with growth management policies and zoning requirements, and (4) the degree to which the land use plan for the TIDD is consistent with the City's applicable long-range policies for development, growth management and conservation, including the growth and infrastructure plan and zoning categories contained in City Resolution No. F/S R-02-111(A).

(L) Consistent with the policies set forth in this Ordinance, a description of the proposed terms of a Development Agreement including the improvement of the specific property within the proposed TIDD, including the expectation of the future obligations of

the owner or developer and the City concerning the zoning, subdivisions, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of the real property within the proposed TIDD. The description of proposed development agreement terms shall not be required to include the level of detail expected to be included in the proposed development agreement itself.

(M) A proposed resolution which shall address those items set forth in Section 4 (C) and 7(C) of the Act.

(N) Such other information as the City may reasonably require after its initial review of the application, including but not limited to preliminary legal opinions, appraisals, further information regarding the relationship of the application to the City's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters.

SECTION 4. APPLICATION PROCEDURES.

(A) Ten (10) copies of the application for the formation of a TIDD shall be submitted to the City's Chief Administrative Officer, which shall coordinate an interdepartmental analysis of each application.

(B) At the time of submission of the application, the applicant shall pay a \$20,000 non-refundable application fee and shall deposit an additional \$30,000 as an advance deposit on account to be applied by the City in its sole discretion to the initial costs incurred in connection with the processing and review of the application and the formation of the TIDD in accordance with the provisions of §1. In calculating costs incurred by the City, the City may include reasonable costs associated with the pre-application discussion contained in §2. An accounting of all costs incurred by the City shall be made to the applicant at its request and if reasonably necessary, additional funds may be requested by the City and must be paid by the applicant. If an applicant withdraws its application, the City shall return the unexpended portion of the advance deposit; provided, that the City shall retain from those funds the amounts necessary to pay costs incurred by the City but not yet paid by the City at the time the application is withdrawn.

(C) At the applicant's request, City staff may, in its discretion, present to the City Council a non-binding resolution expressing the City's intent to proceed with the

formation of the TIDD. Such a resolution may be based upon a preliminary application outline, containing, at a minimum, the following information:

- (1) Ownership of property proposed to be included in the TIDD;
- (2) Location and boundaries of the proposed TIDD;
- (3) General description of improvements to be constructed with TIDD financing and estimated costs of construction;
- (4) Estimated principal amount of TIDD bonds proposed to be issued;
- (5) Estimated maximum annual debt service on TIDD bonds;
- (6) Estimated annual gross receipts tax increment to be generated by the TIDD project and the portion of such increment to be allocated during the time necessary to complete the payment of the TIDD project;
- (7) Estimated annual property tax increment to be generated by the TIDD project and the portion of such increment to be allocated during the time necessary to complete the payment of the TIDD project;

Any resolution adopted pursuant to this section shall express the City's non-binding intent to proceed with the formation of the TIDD, subject to such conditions as may be set forth in the resolution. In the event that this resolution is not passed by the Council, the applicant may receive a refund of all of its advance deposit.

(D) If the City approves the formation of a TIDD and there are existing agreements with developers/landowners for the provision of infrastructure proposed to be furnished by the TIDD, then those agreements shall be deemed amended to reflect the agreements and conditions pertaining to the TIDD. The amendments shall reflect that either the developer/landowner or the TIDD shall provide such infrastructure improvements.

(E) After the application fee and deposit are submitted, City staff shall arrange an initial conference with the applicant and the appropriate City staff, for the purpose of reviewing the application for conformity with City policies. City staff shall use its best efforts to review the application and conduct the initial conference within thirty business days following payment of the application fee and advance deposit.

(F) If at any time during the application process City staff requests additional information, the applicant shall provide any and all supplemental information requested,

in accordance with the provision of §3(N) of this Ordinance.

(G) After analysis of an application as supplemented, City staff under the direction of the Mayor's Office, may prepare a report including recommendations relating to the TIDD and an analysis of the impact of the formation of the TIDD. The report may provide a recommended disposition of the application and any additional requirements that shall be placed on the developer/landowner and the TIDD. The City shall use its best efforts to complete the analysis and report concerning the application within ninety (90) business days following the submission of a fully complete application.

(H) If all costs billed to or incurred by the City have been paid by the applicant by a date at least fourteen (14) calendar days prior to the date of the meeting of the City Council at which the appropriate legislation approving the application is to be introduced and if the application meets the qualifications provided herein as determined by City staff, the application, along with any report and recommendations by City staff, shall be presented by the Applicant and City staff to the Debt Committee established by the City of Albuquerque Debt Management Policy and Debt Committee Ordinance, §§ 4-6-1 et seq., R.O.A. 1994, and thereafter to the City Council, along with appropriate implementing legislation. Final approval of the City Council shall be conditioned on the City Council's conclusion that all matters necessary to be completed prior to the formation of the TIDD have been completed.

(I) If the City Council approves an application for formation of a TIDD, the applicant/developer/landowner and the City staff shall coordinate a schedule of events for formation of the TIDD including either the setting of an election for the matter or declaring that the election is waived, and shall negotiate an appropriate Development Agreement between the City and the developer/landowner which shall be entered into prior to or concurrently with formation of the TIDD, which Development Agreement shall incorporate the requirements of any report, recommendations of the City staff relating to such TIDD, the requirements of this Ordinance and any other restrictions, provisions and agreements required by the City in its discretion.

SECTION 5. TIDD OPERATIONS AND DEBT FINANCING.

(A) In addition to the amounts set forth in Section 4(B), upon formation of a TIDD the developer/landowner shall deposit with the TIDD a nonrefundable administrative

expense fee in the amount of \$15,000. The administrative expense fee shall be applied by the TIDD to the costs and expenses incurred in connection with the formation, review of any feasibility study, election costs, administration, operation and maintenance of the TIDD or its public improvements. From time to time, upon depletion of the administrative expense fee, the TIDD may request, and the developer/landowner shall promptly deposit with the TIDD, additional amounts deemed by the City to be necessary for the purposes contemplated in this section.

(B) In order to provide for the TIDD to be self-supporting for its administrative, operation and maintenance expenses, and to finance services in addition to those provided by the City, the City and the TIDD, unless otherwise agreed, may require the imposition of up to \$5.00 per \$1,000 of assessed value ad valorem tax, not as a tax or charge of the City, but in accordance with the provisions of Sections 12(A)(11) and 13 (A) of the Act, as amended, upon the TIDD taxable property, for the administration of the TIDD, and the operation and maintenance of property which is not City-owned infrastructure otherwise maintained by the City. Failure to impose such tax shall not impose upon the City any obligations for operations.

(C) The amount and structure of debt of a TIDD shall not have a net negative impact on the debt or financing capabilities of the City, taking into account the basic purposes and operation of a TIDD as provided in the Act. Any debt issued shall be in accordance with the provisions of §1(H). The specific terms of each debt financing shall be set forth in the Development Agreement and shall include, but not be limited to, the following:

- (1) The maturities, principal amounts and maximum interest rate on the bonds;
- (2) Whether the bonds shall be publicly offered or privately placed;
- (3) Whether the bonds will be issued, in whole or in part, in book-entry form;
- (4) Whether the bonds are subject to prior redemption;
- (5) Those items listed in §5(D) and 5(E) of this Ordinance;
- (6) The form of all material documents to be used in connection with the issuance of the bonds, including, but not limited to, the TIDD board bond resolution and

prior to the actual issuance, the bond indenture; and

(7) Such other additional terms and provisions as may be determined necessary for inclusion by City staff.

(D) Gross Receipts Tax Increment Bonds shall be payable from the authorized gross receipts tax increment from the gross receipts taxes generated from taxable activities located within the TIDD. An applicant for gross receipts tax revenue bonds shall describe in each financial feasibility study required in §3(E), the following:

(1) The amount and timing of TIDD gross receipts tax increment bonds to be issued.

(2) The expected production of gross receipts tax increment within the TIDD, and its relationship to anticipated absorption of developed real property.

(3) The sources of gross receipts taxes or portions thereof to be pledged to the repayment of the gross receipts tax increment bonds.

(4) Whether the bonds shall be publicly offered or privately placed. Publicly offered bonds shall either (i) be rated (either on their own merits or by use of appropriate credit enhancement) in one of the four highest investment grade ratings from Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Fitch Ratings, or other nationally recognized bond-rating services, or (ii) be issued in connection with a transaction which meets all of the following criteria unless otherwise determined by the City, in its discretion, based upon recommendations made by underwriters or financial consultants acceptable to the City: (a) the minimum equity contribution, excluding real property, of the developer is at least 20% of the estimated initial cost of the project; and (b) the developer and the TIDD shall enter into an appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the developer.

Privately placed bonds need not be rated; however, the purchasers of such bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the Securities Exchange Commission) and must agree not to resell the bonds except to "qualified institutional buyers" or "accredited investors", as such terms are defined by the SEC, in a private placement.

If appropriate, the applicant shall enter into a "Continuing Disclosure Undertaking"

(as required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the bonds.

(E) Property Tax Increment Bonds shall be payable from the authorized property tax increment from taxable property located within the TIDD. Applicants for Property Tax Increment Bonds shall describe in each financial feasibility study as required by §3 (E), the following:

- (1) The amount and timing of TIDD property tax increment bonds to be issued.
- (2) The expected market absorption of development within the TIDD.
- (3) The sources of the property taxes or portions thereof to be pledged to the repayment of the property tax increment bonds.
- (4) Whether the bonds shall be publicly offered or privately placed.

Publicly offered bonds shall either (i) be rated (either on their own merits or by use of appropriate credit enhancement) in one of the four highest investment grade ratings from Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Fitch Ratings, or other nationally recognized bond-rating services, or (ii) be issued in connection with a transaction which meets all of the following criteria unless otherwise determined by the City, in its discretion, based upon recommendations made by underwriters or financial consultants acceptable to the City: (a) the minimum equity contribution, excluding real property, of the developer is at least 20% of the estimated initial cost of the project; and (b) the developer and the TIDD shall enter into an appropriate contribution agreement, which may require a letter of credit or other third-party guarantee of the bonds by the developer.

Privately placed bonds need not be rated; however, the purchasers of such bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the Securities Exchange Commission) and must agree not to resell the bonds except to "qualified institutional buyers" or "accredited investors", as such terms are defined by the SEC, in a private placement.

If appropriate, the applicant shall enter into a "Continuing Disclosure Undertaking" (as required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the bonds.

(F) Unless otherwise determined by the City, the City shall retain its own counsel to advise it in connection with the formation of a TIDD and all activities taken by a TIDD formed by the City, the cost of which shall be paid by the TIDD and the City's bond counsel shall be bond counsel for the issuance of TIDD bonds. From time to time the City may request from bond counsel such opinions as it deems necessary in connection with the formation and activities of the TIDD.

SECTION 6. FINANCIAL CONSIDERATIONS.

(A) If allowed by law (including any applicable federal laws relating to the tax free status of bonds), all bond issues shall include a debt service reserve fund in an amount acceptable to the TIDD Board.

(B) Until the improvements are accepted by the City and all warranty periods have expired, the developer/landowner shall be solely responsible for maintaining the premises upon which the improvements are being constructed in a safe condition. The applicant or the developer/landowner (or such other third party acceptable to the City and the TIDD), shall indemnify the City and the TIDD and their agents and employees and shall hold the City and the TIDD and their agents, officers and employees harmless for, from and against any and all liabilities, claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding relevant to the formation, operation, administration of the TIDD, the offer and sale of TIDD bonds, the levying by the TIDD of any property tax or charge and the operation and maintenance of public infrastructure owned by the TIDD.

(C) Unless otherwise provided to the City pursuant to other requirements prior to TIDD financing and acquisition by the TIDD or City, the TIDD and City shall require an independent environmental report or assessment of any real property which shall be dedicated to or otherwise owned, leased or operated by the City or the TIDD and a proposed form of indemnity agreement with respect to all environmental liability.

(D) Refinancings and refundings of bonds issued on behalf of a TIDD shall be considered utilizing the same criteria set forth in this Ordinance and in particular §5(D) and 5(E). Refinancings and refundings shall be expected to either (i) generate industry accepted interest rate savings; (ii) restructure payment of principal or (iii) eliminate burdensome covenants. Any refinancing or refunding shall be subject to the final review

and approval of the TIDD Board.

(E) The applicant shall be responsible for all costs and expenses incurred in connection with proposed changes to a TIDD application after the City has begun its review process pursuant to this Ordinance.

SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 8. REPEALER CLAUSE. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

SECTION 9. EFFECTIVE DATE. Upon its final passage, this Ordinance shall be recorded in the book of ordinances in the City kept for that purpose, authenticated by the signatures of the President of the City Council and the Mayor and attested by the City Clerk, shall be published on time in a newspaper which maintains an office in the city and which is of general circulation in the City, in accordance with law, and this Ordinance shall be in full force and effect five days after such publication as provided by law.

SECTION 10. COMPILATION. This Ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 11. PUBLICATION. This Ordinance shall go into effect after publication in general summary.